

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE GOOGLE DIGITAL ADVERTISING
ANTITRUST LITIGATION

21-md-3010 (PKC)

PRE-TRIAL ORDER NO. 4

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CASTEL, Senior District Judge:

The Court Orders as follows:

1. Conforming Amendments and/or Motions to Amend have been filed by Lead Counsel in the Advertiser Class Action (Doc 316), Lead Counsel in the Publisher Class Action (Doc 320), Counsel in the Associated Newspapers and Mail Media individual publisher action (Doc 318) and Counsel for 24 Newspaper plaintiffs in individual publisher actions (Doc 325). Without conceding that the proposed amended pleadings state a claim for relief, defendant Google LLC, including to the extent applicable Alphabet, Inc. and YouTube LLC (collectively “Google”) do not oppose the filing of the amended pleadings subject to its right to move to dismiss the amended pleadings (Doc 354). Google seeks leave to move to dismiss the proposed amended pleadings (Doc 367). In the case of the motions filed by Lead Counsel in the Advertiser Class Action and counsel for 24 Newspaper plaintiffs in the individual publisher actions, Meta Platforms, Inc. (“Meta”) opposes the amendments on grounds of futility (Docs 355 & 356). The Court will grant leave to file the amended pleadings (Docs 316, 318, 320 and 325) without adjudicating the issue of futility, and subject to the right of each defendant to move to dismiss the amended pleadings. The amended pleadings (each of which has been submitted as part of the motions to amend) shall be separately filed by December 2, 2022.

2. Plaintiffs SPX Total Body Fitness LLC, Skinny School LLC and Mint Rose Day Spa LLC assert that they may amend their complaints as of right.¹ Pursuant to the Court's authority under Rule 16(b)(3)(A), Fed. R. Civ. P., any amended pleading to be filed as of right shall be filed by December 2, 2022.

3. By February 3, 2023, Google and, to the extent applicable, Meta may move to dismiss each of the federal claims in the amended pleadings authorized or contemplated in paragraphs 1 and 2 hereof and the complaint in any other Member Case of this MDL (other than the action brought by the State Plaintiffs), including the Organic Panaceas complaint. Each set of plaintiffs may respond by March 3, 2023 and Google and Meta may each reply by March 31, 2023. Each party's main briefs may not exceed 30 pages and reply briefs may not exceed 20 pages. In view of the Court's September 13, 2022 Opinion and Order addressing many overlapping issues, the parties may reference but should not brief issues that have been decided by the Court in the September 13 ruling unless necessitated by the unique allegations of the non-movant's pleading.

4. Google seeks to file a motion to dismiss the state law claims in the State Plaintiffs' Third Amended Complaint (Doc 357). The State Plaintiffs seek to amend their pleadings before any motion to dismiss is filed. The Court will continue the stay of Google's time to answer, the time for any amendment by the State Plaintiffs and any motion practice on the state law claims without prejudice to the right of any party to apply to the Court to dissolve the stay ninety days after entry of this Order. The State Plaintiffs and Google shall meet and confer on a stipulation as to the effect on any of the state law claims of the Court's Opinion and

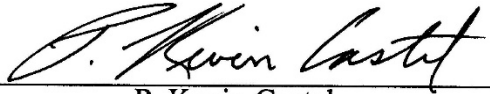
¹ The Court is not presently ruling on the ability of any party to amend as of right. Judge Gilliam ordered a stipulated amendment (Doc 33) to substitute SPX Total Body Fitness LLC for plaintiff Kimberley Negron. 21 cv 6870, Order of May 3, 2021 (Doc 34). See Rule 15(a)(1), Fed. R. Civ. P.

Order of September 13, 2022, including preservation of a party's right to appeal or reinstate a state law claim that survives or is dismissed premised on the ruling on the analogue federal antitrust claim, and report to the Court within 21 days.

5. The stay in paragraph 4 shall also apply to any state law claim in any of the other Member Cases of this MDL.

6. The Clerk shall terminate the parties' motions and letter motions (Docs 316, 318, 320, 325, 357, 367 in 21-md-3010; Doc 54 in 21-cv-3446; Doc 214 in 21-cv-6841; and Doc 115 in 21-cv-7034).

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
November 18, 2022